00020.130.001 :jeh 06/30/06 Rev. 07/17/06jeh

ORDINANCE NO. 2305

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, ADDING A NEW CHAPTER 2.06 TO THE REDMOND MUNICIPAL CODE IN ORDER TO PROVIDE FOR THE INDEMNIFICATION OF CITY OFFICIALS AND EMPLOYEES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON,

DO ORDAIN AS FOLLOWS:

Section 1. Indemnification. A new Chapter 2.06 is hereby added to the Redmond Municipal Code to read as follows:

Chapter 2.06

INDEMNIFICATION OF CITY EMPLOYEES AND OFFICIALS

Sections:

2.06.010	Definitions.
2.06.020	Legal representation.
2.06.030	Exclusions.
2.06.040	Determination of exclusion.
2.06.050	Representation and payment of claims — Conditions.
2.06.060	Effect of compliance with conditions.
2.06.070	Failure to comply with conditions.
2.06.080	Reimbursement of incurred expenses.
2.06.090	Conflict with provisions of insurance policies.
2.06.100	Pending claims.

2.06.010 Definitions.

Unless the context indicates otherwise, the words and phrases used in this chapter shall have the following meanings:

- A. "Employee" means any person who is or has been employed by the city. "Employee" does not include independent contractors.
- B. "Official" means any person who is serving or has served as an elected city official, and any person who is serving or has served as an appointed member of any city board, commission, committee or other appointed position with the city. "Official" does not include independent contractors performing the duties of appointed positions.

2.06.020 Legal representation.

- A. As a condition of service or employment the city shall provide to an official or employee, and any spouse of an official or employee to the extent the marital community is implicated, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official or employee may have concluded service or employment with the city, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official or employee resulting from any conduct, act or omission of such official or employee performed or omitted on behalf of the city in their capacity as a city official or employee, which act or omission is within the scope of their service or employment with the city.
- B. The legal services shall be provided by the office of the city attorney unless:
- 1. Any provision of an applicable policy of insurance provides otherwise; or
- 2. A conflict of interest or ethical bar exists with respect to said representation; or
- 3. The Mayor determines that the assignment of counsel other than the city attorney is necessary or prudent under the circumstances.

C. In the event that outside counsel is retained under subsection (B)(2) above, the city shall indemnify the employee from the reasonable costs of defense.

2.06.030 Exclusions.

- A. In no event shall protection be offered under this chapter by the city to:
- 1. Any dishonest, fraudulent, criminal, willful, intentional or malicious act or course of conduct of an official or employee;
- 2. Any act or course of conduct of an official or employee which is not performed on behalf of the city;
- 3. Any act or course of conduct which is outside the scope of an official's or employee's service or employment with the city; and/or
- 4. Any lawsuit brought against an official or employee by or on behalf of the city.

Nothing herein shall be construed to waive or impair the right of the city council to institute suit or counterclaim against any official or employee nor to limit its ability to discipline or terminate an employee.

B. The provisions of this chapter shall have no force or effect with respect to any accident, occurrence or circumstance for which the city or the official or employee is insured against loss or damages under the terms of any valid insurance policy; provided, that this chapter shall provide protection, subject to its terms and limitations, above any loss limit of such policy. The provisions of this chapter are intended to be secondary to any contract or policy of insurance owned or applicable to any official or employee. The city shall have the right to require an employee to utilize any such policy protection prior to requesting the protection afforded by this chapter.

2.06.040 Determination of exclusion.

The determination of whether an official or employee shall be afforded a defense by the city under the terms of this chapter shall be finally determined by the city council on the recommendation of the mayor. The mayor and/or city council may request the city attorney to provide an opinion or recommendation concerning the determination. The decision of the city council shall be final as a legislative determination of the council. Nothing herein shall preclude the city from undertaking an officer or employee's defense under a reservation of rights.

2.06.050 Representation and payment of claims — Conditions.

The provisions of this chapter shall apply only when the following conditions are met:

- A. In the event of any incident or course of conduct potentially giving rise to a claim for damage, or the commencement of a suit, the official or employee involved shall, as soon as practicable, give the city risk manager written notice thereof, identifying the official or employee involved, all information known to the official or employee involved, all information known to official or employee with respect to the date, time, place and circumstances surrounding the incident or conduct giving rise to the claim or lawsuit, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses.
- B. Upon receipt thereof, the official or employee shall forthwith deliver any claim, demand, notice or summons or other process relating to any such incident or conduct to the city risk manager, mayor, or city clerk, and shall cooperate with the city risk manager and city attorney, or an attorney designated by the city, and, upon request, assist in making settlement of any suit and enforcing any claim for any right of subrogation against any persons or organizations that may be liable to the city because of any damage or claim of loss arising from the incident or course of conduct, including but not limited to rights of recovery for costs and attorneys' fees arising out of state or federal statute upon a determination that the suit brought is frivolous in nature.
- C. Such official or employee shall attend interviews, depositions, hearings and trials and shall assist in securing and giving evidence and obtaining attendance of witnesses all without any additional compensation to the official or employee and, in the event that an employee has left the employ of the city, no fee or compensation shall be provided. The city shall pay reasonable out-of-pocket

expenses and costs (e.g. travel expenses, parking expenses, etc) incurred by employees and officials (including former employees and former officials) in connection with such attendance. All such expenses shall be approved by the mayor or her designee and the mayor's determination shall be final.

D. Such official or employee shall not accept nor voluntarily make any payment, assume any obligations, or incur any expense relating to the claim or suit, other than for first aid to others at the time of any incident or course of conduct giving rise to any such claim, loss or damage.

2.06.060 Effect of compliance with conditions.

If legal representation of an official or employee is undertaken by the city attorney, all of the conditions of representation are met, and a judgment is entered against the official or employee, or a settlement made, the city shall pay such judgment or settlement; provided, that the city may, at its discretion, appeal as necessary such judgment.

2.06.070 Failure to comply with conditions.

In the event that any official or employee fails or refuses to comply with any of the conditions of Section 2.06.050, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the provisions of this chapter shall be inapplicable, and have no force or effect with respect to any such claim or litigation.

2.06.080 Reimbursement of incurred expenses.

- A. If the city determines that an official or employee does not come within the provisions of this chapter, and a court of competent jurisdiction later determines that such claim does come within the provisions of this chapter, then the city shall pay any judgment rendered against the official or employee and reasonable attorneys' fees incurred in defending against the claim. The city shall pay any attorneys' fees incurred in obtaining the determination that such claim is covered by the provisions of this chapter.
- B. If the city determines that a claim against a city official or employee does not come within the provisions of this chapter, and a court of competent jurisdiction later finds that such claim does not come within

the provisions of this chapter, then the city shall be reimbursed by the official or employee for costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this chapter.

2.06.090 Conflict with provisions of insurance policies.

Nothing contained in this chapter shall be construed to modify or amend any provision of any policy of insurance where any city official or employee thereof is the named insured. In the event of any conflict between this chapter and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this section shall be deemed to limit or restrict any employee's or official's right to full coverage pursuant to this chapter, it being the intent of this chapter and section to provide the coverage detailed in this chapter outside and beyond insurance policies which may be in effect, while not compromising the terms and conditions of such policies by any conflicting provision contained in this chapter.

2.06.100 Pending claims.

The provisions of this chapter shall apply to any pending claim or lawsuit against an official or employee, or any such claim or law suit hereafter filed, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance or any code provision adopted hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance or any such code provision.

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall

take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

OF REDMOND

ATTEST/AUTHENTICATED:

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

FILED WITH THE CITY CILERK; PASSED BY THE CITY COUNCIL:

SIGNED BY THE MAYOR:

PUBLISHED:

EFFECTIVE DATE:

ORDINANCE NO: 2305

September 28, 2006

October 3, 2006

October 3, 2006 October 9, 2006

October 14, 2006